

# ITEL

RECORDATION NO. *8838-L*

Filed 1425

**Rail Division**Two Embarcadero Center  
San Francisco, California 94111  
(415) 955-9090  
Telex 34234

AUG -3 1982 -11 35 AM

INTERSTATE COMMERCE COMMISSION

2-215A047

No. AUG 3 1982

Date.....

Fee \$..10.00

ICC Washington, D. C.

July 23, 1982

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation for filing and recordation under the Lease Agreement dated as of April 29, 1977 (the "Lease") between Itel Corporation, Rail Division ("Itel") and Corinth and Counce Railroad Company ("Lessee"), which was filed on May 27, 1977 at 1:45 P.M. and given recordation No. 8838, four counterparts of the following document:

Amendment No. C (the "Amendment") dated as of  
March 15, 1982 to the Lease between Itel and Lessee.

The names and addresses of the parties to the aforementioned Amendment  
are:

1. Corinth and Counce Railroad Company  
P.O. Box 128  
Highway 57  
Counce, Tennessee 38326
2. Itel Corporation, Rail Division  
Two Embarcadero Center, 24th Floor  
San Francisco, CA 94111

The equipment covered by the Amendment is one hundred and fifty (150) 70-ton boxcars, 50'6" in length, A.A.R. mechanical designation XM, bearing reporting marks CCR 6500-6649.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

RECEIVED  
AUG 3 11 29 AM '82  
FEE OPERATIONS BR.*3 - J. McMahon*  
*counterpart*

Ms. Agatha Mergenovich, Secretary  
July 23, 1982  
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be delivered to the bearer of this letter.

Sincerely,



Patricia Salas Pineda  
Counsel

PSP:dmm  
Enclosures

cc: Michael Walsh, Esq.  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10020

Robert S. Clark, Esq.  
Senior Trust Officer  
First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Salt Lake City, Utah 84111

Doug Drummond  
Itel Corporation

Linda Lawrence  
Itel Corporation

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Patricia Salas Pineda-Counsel  
Itel Corporation-Rail Div.  
Two Embarcadero Center  
San Francisco, California 94111

August 3, 1982

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/3/82 at 11:25AM & 11:30AM and assigned re-recordation number(s). 8838-4 13717  
9935-C  
10033-F

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

Rec'd 8838

RECORDATION NO. 8838-L Filed 1425

L-0285  
6/24/82

AUG -3 1982 -11 45 AM

AMENDMENT C

INTERSTATE COMMERCE COMMISSION

AMENDMENT C (the "Amendment") to that certain Lease Agreement (the "Agreement") dated as of April 29, 1977, between ITEL CORPORATION, RAIL DIVISION, successor in interest to SSI Rail Corp. as lessor ("Lessor") and THE CORINTH AND COUNCE RAILROAD COMPANY as lessee ("Lessee") is made this 15th day of March, 1982 by and between Lessor and Lessee.

W I T N E S S E T H:

WHEREAS, Lessor and Lessee are parties to the Agreement pursuant to which five hundred (500) Boxcars bearing the reporting marks CCR 6000-6499 have been delivered by Lessor to Lessee;

WHEREAS, two (2) Boxcars bearing the reporting marks CCR 6332 and CCR 6180 were destroyed on or about November 24, 1979 and August 6, 1981, respectively.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Equipment Schedule No. 4 executed on October 10, 1978, attached and incorporated into the Agreement, shall be amended by the deletion of the words "CCR 6400 - CCR 6799" each time they appear and the number "400" from the "No. of Cars" column and by the substitution therefor of the words "CCR 6400-6499 and CCR 6650-6799" and the number "250", respectively.
3. Equipment Schedule No. 5, attached hereto, which references one hundred fifty (150) Boxcars bearing the reporting marks 6500-6649 inclusive, is hereby added to and made a part of the Agreement.
4. Boxcars as defined in the Agreement shall refer to all boxcars subject to the Agreement except that where certain provisions apply only to Boxcars bearing the reporting marks CCR 6500-6649 inclusive, such Boxcars shall be referred to as ("Car(s)").
5. With respect to the Cars referenced on Equipment Schedule No. 5 only, Section 2.A. of the Agreement shall be replaced by the following:
  - "A. This Agreement shall remain in full force until it is terminated as to all of the Boxcars as provided herein. The term of the Agreement with respect to each Car described on Equipment Schedule No. 5 shall commence at 12:00 P.M. on the date and at the location that such Car is repainted

and remarked pursuant to Section 3.A., and shall expire as to all of the Cars described on Equipment Schedule No. 5, twelve (12) years from the date on which the first Car on such Schedule was remarked (the "Initial Term").

6. With respect to the Cars referenced on Equipment Schedule No. 5 only, Section 3.A. of the Agreement shall be replaced by the following:

"3.A. Lessor shall inspect each of the Cars tendered to Lessor, or otherwise held by it, for delivery to Lessee. Prior to such inspection, Lessor shall make available for Lessee's inspection a representative sample Car, and Lessee shall thereafter, and prior to Lessor's inspection, confirm in writing that said sample Car does (or does not) conform to the specifications agreed to by Lessee. Upon such approval by Lessee, and upon Lessor's determination that the Cars conform to the specifications set forth in Equipment Schedule No. 5, and should the Agreement not have been terminated prior thereto, Lessor shall, at its own expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:00 P.M. on the date and at the location such Car is repainted and remarked. After the Cars have been repainted and remarked, the Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Lessor incurs expenses in having other railroads move Cars in accordance with this Section, except for any expenses incurred in the initial delivery of such Cars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of invoice from Lessor. For the purposes hereof, the term "Initial Loading" as to each Car shall be the earlier to occur of either the first loading of freight for such Car on Lessee's railroad line or August 31, 1982; provided, however, that if any Car is not delivered by August 31, 1982, and has not been first loaded on any other railroad line on or before such date, such Car(s) shall not be counted for the purpose of Utilization Rate (as hereinafter defined in Section 6.A.(ii)) until such Car(s) are (1) delivered; or (2) first loaded on any other railroad line. The delivery of the Cars bearing the reporting marks CCR 6500-6599 shall commence at any time subsequent to the execution of this Agreement. The delivery of the Cars bearing the reporting marks CCR 6600-6649 shall

commence subsequent to the date Lessor receives an "Authorization to Commence Delivery" (as set forth in Exhibit A attached hereto) executed by Lessee or June 30, 1983, whichever date occurs first. If the delivery for the Cars bearing the reporting marks CCR 6600-6649 has not commenced prior to June 30, 1983, delivery of the Cars bearing the reporting marks CCR 6600-6649 shall not commence unless the Utilization Rate for the Cars is equal to or greater than the applicable Base Rental (as hereinafter defined in Section 6.A.(iii)).

**7. Section 3.B. is amended by the addition of the following:**

**"3.B.** Lessee shall, to the extent practical and commercially reasonable, load the Boxcars bearing the reporting marks CCR 6000-6499 prior to loading the Boxcars bearing the reporting marks CCR 6500-6649; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks."

**8. Section 3 is amended by the addition of the following:**

**"3.D.** During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar boxcars upon prior written notice from Lessor to Lessee."

**9. Section 4 of the Agreement is hereby deleted and replaced by the following:**

**"4.A.** Lessor shall, at its expense, prepare and file, with respect to the Boxcars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to the following: (i) preparation of appropriate AAR interchange agreements with respect to the Boxcars; (ii) registration of the Boxcars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ('UMLER'); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ('ICC') and/or any other regulatory agencies with respect to the Boxcars. Lessee hereby authorizes Lessor to be the recipient of AAR car hire exchange tapes and Train II tapes with respect to the Boxcars and agrees to execute any other documents necessary for such authorization.

**B.** Lessor shall perform all record keeping functions relating to the use of the Boxcars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as defined in Section 6 of this Amendment) and Payments (as defined in Section 6 of the Agreement) from other railroad companies, maintenance and repair, and billing in accordance with the AAR Interchange Rules

('Interchange Rules'). Immediately upon receipt from other railroads of any Revenues and Payments in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such Revenues and Payments in accordance with Section 6.D. of this Amendment and Section 6.B. of the Agreement, respectively. All record keeping performed by Lessor hereunder and all records of payments, changes and correspondence related to the Boxcars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours. Upon Lessor's reasonable request, Lessee shall supply Lessor with daily telephone reports of the number of Boxcars in Lessee's possession or control. Lessee shall, on a monthly basis, supply Lessor with copies of Lessee's interchange records with respect to the Boxcars interchanged to and from Lessee's railroad line. Upon Lessor's request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay Revenues owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid Revenues. Lessor has the right to offset against Lessee's revenue sharing portion set forth in Section 6.C. of this Amendment, any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid and which relate to the Cars.

- C. If Lessee acquires or leases additional equipment bearing the reporting marks of Lessee from a party other than Lessor ('Other Equipment'), Lessor shall, concurrently with such acquisition or leasing of Other Equipment, make available to Lessee car hire accounting for the Other Equipment at its then current rates. If Lessee elects to have Lessor perform such car hire accounting, the parties shall at that time enter into a separate car hire service agreement associated with Lessor's performance of car hire accounting for the Other Equipment, provided, however, that this shall in no way interfere with Lessor's performance of car hire accounting for the Boxcars."

10. Section 5.D. of the Agreement is hereby deleted and replaced by the following:

- "D. Within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, Lessor agrees to reimburse Lessee for all taxes actually paid in cash, by check, or by draft by the Lessee resulting from (1) ad valorem tax assessments on the Boxcars; and (2) any assessment, levy or impost relating to each Boxcar, the Agreement or the delivery of the Boxcars which remained unpaid as of the date of the delivery of the Boxcars to Lessee or which are assessed, levied or imposed during the term of this Agreement, except taxes on income

imposed on Lessee, gross receipts or sales and use tax imposed on the mileage charges and/or car hire revenue or sale or lease or the Boxcars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Boxcars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses including legal fees resulting from such contest."

11. With respect to the Cars referenced on Equipment Schedule No. 5 only, Section 6, as amended, is replaced by the following:

"6.A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Cars, whether or not collected and received by Lessor and without regard to any claimed non-payment, abatement, reduction or offset, provided, however, that upon the occurrence of any such non-payment, abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts, but only if the occurrence of such non-payment, abatement, reduction or offset shall be due to an act or failure to act by Lessee. In the event that any such non-payment, abatement, reduction or offset occur for any reason other than an act or failure to act by Lessee, Lessee shall be responsible for such non-payment\* abatement, reduction or offset solely from and to the extent of the revenue sharing portion it would otherwise be entitled to under Section 6.
- (ii) The "Utilization Rate" of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Cars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the Initial Loading.

\*(due other than by act or failure to act by Lessor),

- (iii) The "Base Rental" shall be defined (a) for the period commencing as of the Initial Loading through and including December 31, 1982 as an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of forty (40) percent with the assumption that each Car traveled sixty-five (65) miles per day; (b) for the period commencing January 1, 1983 through and including December 31, 1983 as an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of sixty-five (65) percent with the assumption that each Car traveled sixty-five (65) miles per day; and (c) for the period commencing January 1, 1984 through and including the expiration or earlier termination of this Agreement as an amount equal to the Revenues which such Cars would have earned in the aggregate at a Utilization Rate of eighty-five (85) percent with the assumption that each Car traveled sixty-five (65) miles per day.
- B. Lessor shall receive and retain all Revenues earned by the Cars prior to their Initial Loading.
- C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:
  - (i) In the event Revenues earned in any calendar year or applicable portion thereof are less than or equal to the applicable Base Rental, Lessee shall pay to Lessor a sum equal to one hundred percent (100%) of the total Revenues.
  - (ii) In the event Revenues earned in any calendar year exceed the applicable Base Rental, or applicable portion thereof Lessee shall pay to Lessor an amount equal to the applicable Base Rental and Lessee shall receive all Revenues received in excess of the applicable Base Rental.
- D. The calculations required in Section 6.C. shall be made within five (5) months after the end of each calendar year ("Yearly Calculations"). However, to enable Lessor to meet its financial commitments, Lessor shall, prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amounts owed under Section 6.C., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year to date basis the amount due either party pursuant to this Section.

Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the Yearly Calculation, any amount paid to either party in excess of the amounts required shall be promptly refunded to the appropriate party. The above calculations shall be made separately from the calculations on similar equipment which Lessee has previously leased from Lessor.

- E. If, with respect to any calendar quarter, Revenues are less than the applicable Base Rental, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the applicable Base Rental for such calendar quarter.
- F. If, subsequent to the Initial Loading, any Boxcar remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks. If any such Boxcar has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Boxcars as specified in Section 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Boxcar had been in the physical possession and use of another railroad for the entire period with the assumption that each Boxcar travelled sixty-five (65) miles per day.
- G. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Boxcar Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rule 7.
- H. In the event more than two hundred (200) Boxcars shall require storage on Lessee's railroad tracks at any one time and Lessee shall be physically unable to store the Boxcars in excess of two hundred (200) Boxcars, Lessor shall reimburse Lessee for all costs relating to the temporary storage of such excess Boxcars. This Section 6.H. shall not in any way limit Lessor's rights under Sections 6.E. and 6.F. of this Amendment."

12. Lessor hereby agrees that if, due to the granting of an exemption from regulation of boxcar traffic pursuant to a petition filed before the Interstate Commerce Commission, loadings of the Boxcars on Lessee's railroad line are reduced such that any of the Cars shall become surplus to the requirements of Lessee, Lessor shall, upon written notice from Lessee, arrange for, and pay, all costs of transporting and storing such Surplus Cars ("Surplus Cars" to be hereinafter defined as the Cars which, when removed from service or placed in storage pursuant to this paragraph, would, by their removal, increase the amount the remaining Cars would earn up to an amount equal to the applicable Base Rental); provided, however, that Lessor may exercise an option at any time to terminate the Agreement with respect to such Surplus Cars. Any Car placed in storage pursuant to this paragraph shall not be counted in determining the "Utilization Rate" as determined under Section 6.A.(ii) (as defined in paragraph 11 of this Amendment), from the date of notice to Lessor until such Car is returned to interline revenue service.
13. Nothing set forth in this Amendment with respect to the Agreement represent a waiver by the parties hereto of any rights under the Agreement or the Bankruptcy Code and is not an assumption of the Agreement under the Bankruptcy Code, and in event of the rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Agreement.
14. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.
15. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL CORPORATION,  
RAIL DIVISION

By: *Edward M. Dean*

Title: *President*

Date: *7/1/82*

CORINTH AND COUNCE  
RAILROAD COMPANY

By: *C. W. Byrd*

Title: *President*

Date: *June 29, 1982*

EXHIBIT A

AUTHORIZATION TO COMMENCE DELIVERY

Corinth and Counce Railroad Company ("CCR") hereby authorizes Itel Corporation, Rail Division ("Itel Rail") to commence delivery of fifty (50) boxcars bearing the reporting marks CCR 6600-6649 described on Equipment Schedule No. 5, attached to and incorporated into the Lease Agreement dated April 29, 1977 between Itel Rail and CCR, as amended by Amendment A, Amendment B, and Amendment C.

CORINTH AND COUNCE  
RAILROAD COMPANY

Authorized By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EQUIPMENT SCHEDULE NO. 5

Itel Corporation, Rail Division hereby leases the following Cars to Corinth and Counce Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of April 29, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	General Purpose 70-ton Boxcars	CCR 6500 -6649	50'6"	9'6"	11'1"	10'	150

EQUIPMENT TO BE DELIVERED SHALL NOT EXCEED THE \$35,001 - \$36,000 UMLER CAR VALUE *CW 12*  
*ES*

ITEL CORPORATION,  
RAIL DIVISION

BY: *Edward M. O'Don*

TITLE: *President*

DATE: *7/1/82*

CORINTH AND COUNCE  
RAILROAD COMPANY

BY: *CW Byrd*

TITLE: President

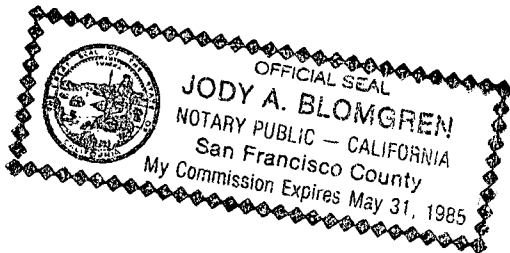
DATE: June 29, 1982

STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

ss:

On this 1<sup>st</sup> day of July, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Amendment C and Equipment Schedule No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren  
Notary Public

STATE OF MISSISSIPPI )

COUNTY OF HINDS )

ss:

On this 29th day of June, 1982, before me personally appeared C. W. BYRD, to me personally known, who being by me duly sworn says that such person is President of Corinth and Counce Railroad Company, that the foregoing Amendment C and Equipment Schedule No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



George Steele Brasher  
Notary Public